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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,553	11/12/2003	William E. Webler	5618P3665	9168

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EXAMINER

GBERBI, SUZETTE JAIME J

ART UNIT PAPER NUMBER

3738

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/712,553

Applicant(s)

WEBLER ET AL.

Examiner

Suzette J. Gherbi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) 14-16,21,24-27,29 and 32-72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,17-20 and 22-31 is/are rejected.
- 7) ☒ Claim(s) 3,4 and 8-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/12/04; 5/19/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: IDS cont. 11/15/04.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species A in the reply filed on 12/15/6 is acknowledged. The traversal is on the ground(s) that applicant believes species A should include at least figures 1A-1C, 1F, 2A and 5A. This is found to be partially persuasive. Upon review of the application the examiner has concluded that species **1A-1C** and **1F** should be included in species A. Figures **2A** and **5A** are a different embodiments which encompass a catheter assembly and thus will not be included in species A. Further claims **1-13, 17-20, 22-23, 28, and 30-31** read upon species A and will be examined. Claims **14-16, 21, 24-27, 29, 32-72** are withdrawn. The requirement is deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 5-7, 17-20, 22, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by St.Goar et al. 6,090,096. St. Goar et al. discloses the invention as

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currently claimed noting figures 1 and 8 comprising: a tether (22, 82) *suitable for extending through a ventricle of a heart from at a proximal end, an atrioventricular valve annulus to, at a distal end one of a wall of a ventricle and a papillary muscle within the ventricle; and an aptation device coupled to the tether (110) at a position corresponding to a location to contact cusps of an atrioventricular valve during systole, wherein the tether and aptation device are suitable for percutaneous delivery to a patient; wherein the aptation device is coupled about an axis of the tether.* These are article claims and the intended use recitation/functional language of the claims carries no patentable weight in the absence of any distinguishing structure. St. Goar et al. clearly discloses the structure as claimed and is found to be inherently capable of performing the functions.

4. Claims 1-2, 5-7, 17-20, 22, 23, 28, 30-31 rejected under 35 U.S.C. 102(b) as being anticipated by Schweich, Jr. et al. 6,261,222. Schweich Jr. et al. discloses the invention as currently claimed noting figure 19 (see col. 7, lines 45-54, col. 10, lines 55-67 and col. 11, lines 41-61, col. 12, lines 41-45) comprising: a tether/tension member (18) *suitable for extending through a ventricle of a heart from at a proximal end, an atrioventricular valve annulus to, at a distal end one of a wall of a ventricle and a papillary muscle within the ventricle; and an aptation device coupled to the tether (this could be element 20 or any of the devices mentioned in col. 12, lines 67, col. 13, lines 1-8) at a position corresponding to a location to contact cusps of an atrioventricular valve during systole, wherein the tether and aptation device are suitable for*

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percutaneous delivery to a patient; wherein the aptation device is coupled about an axis of the tether. These are article claims and the intended use recitation/functional language of the claims carries no patentable weight in the absence of any distinguishing structure. St. Goar et al. clearly discloses the structure as claimed and is found to be inherently capable of performing the functions.

Allowable Subject Matter

5. Claims 3-4, 8-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 571-272-4751.

7. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

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8. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

A handwritten signature in black ink, appearing to read "Suzette J-J Gherbi".

Suzette J-J Gherbi
27 February 2006